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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION FOR CLARIFICATION OF
MAY 20, 2022 PRESERVATION ORDER
(DKT. 587)**

Judge: Hon. Susan van Kenlen

I. INTRODUCTION

Pursuant to Local Rule 7-11, Google respectfully seeks clarification with respect to the following two discrete portions in the Court’s May 20, 2022 Order Adopting in Part and Modifying in Part the Special Master’s Report and Recommendation on Referred Discovery Issues re Preservation Plan (Dkt. 587) (“Preservation Order”).

- “Prior to final disposition of this case, Google may not shorten any data preservation length for any data source already being preserved pursuant to Google data retention policy or pursuant to prior court orders ... without the express permission of the Court.” Dkt. 587 at 9.
- “De/Encryption keys are to be preserved in their entirety for the respective time periods (‘rotating keys’) and data sources.” *Id.* at 8.

II. ARGUMENT

Google seeks clarification of two implementation details to ensure that it understands the information that is covered by the Preservation Order.

First, Google requests clarification whether the Preservation Order requires Google to seek the express permission of this Court before Google can change the retention period of any data source, including data not covered by the Preservation Order. The Preservation Order states that “[p]rior to final disposition of this case, Google may not shorten any data preservation length for any data source already being preserved pursuant to Google data retention policy or pursuant to prior court orders, or for any data source included in this preservation plan as set forth in this Order ... without the express permission of the Court.” Dkt. 587 at 9. Google believes that the most reasonable interpretation of this language is that “any data source already being preserved” includes only those data sources identified specifically in the Preservation Order. However, Google is mindful that the language may also be interpreted to include *any and all* data sources within Google that are currently covered by a retention policy, regardless of their relevance to this case.

The latter interpretation would sweep in many logs at Google that are irrelevant to the claims and defenses in *Brown v. Google*. It would be unduly burdensome, and potentially overwhelm the Court, if Google were required to seek permission for preservation period changes of clearly irrelevant log data including (i) sources that do not contain user data, (ii) data that pertains to users

1 and events outside of United States, (iii) sources that pertain to products and services not at issue in
 2 this case, such as Google Arts & Culture, Assistant, Blogger, Calendar, Chat, Contacts, Dictionary,
 3 Docs, Drive, Fi, Fit, Gmail, Home, Meet, Messenger, One, Pay, Play, Photos, Street View, and
 4 Translator, or (iv) data that is older than June 1, 2016, the first day of the class period. Dkt. 587-1
 5 at 1. *Bright Sols. for Dyslexia, Inc. v. Doe 1*, 2015 WL 5159125, at *2 (N.D. Cal. Sept. 2, 2015)
 6 (“Courts must exercise restraint in using their inherent authority to issue preservation orders ...
 7 Before a preservation order is implemented, there must be some showing of a significant concern
 8 that *potentially relevant* evidence will be destroyed causing harm to the opposing party”) (emphasis
 9 added); *Lord Abbett Mun. Income Fund, Inc. v. Asami*, 2014 WL 5477639, at *3 (N.D. Cal. Oct. 29,
 10 2014) (“This district recognizes that the proportionality principle applies to the duty to preserve
 11 potential sources of evidence.”).

12 Therefore, Google respectfully seeks clarification that it is not required to seek permission
 13 for changes to preservation periods of any logs not identified specifically in the Preservation Order.

14 ***Second, Google seeks clarification whether the Preservation Order requires Google to***
 15 ***preserve all sensitive rotating encryption keys even if the data is preserved in a safe and secure***
 16 ***manner that does not require such keys.*** The Preservation Order sustained Plaintiffs’ objection to
 17 the Special Master’s April 4, 2022 Report and Recommendation that “Google should be required to
 18 preserve all encryption keys necessary to decrypt identifiers and cookies,” and directs Google to
 19 preserve de/encryption keys in their entirety for the respective time periods and data sources.
 20 Dkt. 587 at 8. Google understands the need to preserve data in a format that can be decrypted, and
 21 respectfully seeks clarification that Google would be in compliance with the Preservation Order by
 22 preserving the encryption keys necessary to decrypt data preserved pursuant to the Preservation
 23 Order and “allow Plaintiffs to read the data” (Dkt. 545-2 at 1). Specifically, Google seeks to clarify
 24 that it need not preserve sensitive rotating encryption keys if those keys are not required to decrypt
 25 the preserved data. Google seeks this clarification because preserving sensitive rotating encryption
 26 keys constitutes a significant information security risk.

27 Finally, Google would provide additional briefing on this issue if it would aid the Court.
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